

Thu, 06/30/2022 03:44:56 PM SERB

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Bryan J. Pesta,

Charging Party,

v.

American Association of University Professors - Cleveland State University Chapter,

Charged Party.

Case Number: 2022-ULP-04-0045

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Before Chair Zimpher, Vice Chair Mills, and Board Member Walter: June 30, 2022.

Bryan J. Pesta (Charging Party) filed an unfair labor practice charge against the American Association of University Professors - Cleveland State University Chapter (Charged Party/Union). Charging Party alleged Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to properly represent him during the internal investigation process and declining to take his grievance to arbitration.

Pursuant to Ohio Revised Code § 4117.12, the State Employment Relations Board conducted an investigation of this charge. The investigation revealed no probable cause existed to believe Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed that Mr. Pesta did not provide sufficient information or documentation to show how the Union's actions were arbitrary, discriminatory or in bad faith in its representation during his internal investigation. Information provided by Mr. Pesta confirms that, on numerous occasions, the Union advised Mr. Pesta that it would not be involved in how the Ad hoc committee and Provost determined his involvement in academic research misconduct, but it would make sure that the process followed the contract and the policies and procedures.

Mr. Pesta's outside counsel advised the Union that he would be handling the internal investigation process and the Union should handle any grievance. Pursuant to *In re Williams*, SERB 85-059 (11-7-85), "It is impossible to anticipate all the conditions which may constitute a violation of the duty. It is easy to state one condition that is not. A disagreement between the grievant and the union does not demonstrate, per se, a violation of the duty. To hold otherwise would equate disagreement with unfairness – an obviously illogical conclusion". Mr. Pesta confirmed to the Union in a February 2022 email that he agreed with the Union that he did not see any "procedural issues" during the investigation or subsequent hearings. Mr. Pesta's allegation that the Union did not take his grievance to arbitration is flawed because the Union advised him that it would only file a grievance if the University's process violated the contract. The Union advised Mr. Pesta that it would not be filing a grievance and therefore, the Union did not have any grievance to advance to arbitration. Even if a grievance had been filed, pursuant to *In re AFSCME, Local 2312*, SERB 89-029 (10-16-89), a grievant has no absolute right to have the grievance advanced to arbitration. Based on the totality of the circumstances, the Union's actions do not rise to the level of a (B)(6) violation of the statute. Accordingly, the



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Case No. 2022-ULP-04-0045

June 30, 2022

Page 2 of 2

charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated.

It is so directed.

ZIMPHER, Chair; MILLS, Vice Chair; and WALTER, Board Member, concur.



W. CRAIG ZIMPER, CHAIR

I certify that this document was filed and a copy served upon each party or the representative of each party by e-mail⁴ with acknowledgment requested, on this 30th day of June, 2022.



ERIN E. CONN
ADMINISTRATIVE OFFICER

June 30, 2022:4

CC:

American Association of University Professors - Cleveland State University Chapter,

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⁴ In the event a party does not have an electronic mail address on file, this notice was sent by regular U.S. mail.